

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, May 21, 2008 – 9:00 a.m. – Room C450 State Capitol

**Members Present:**

Sen. Gregory S. Bell, Senate Chair  
Rep. Eric K. Hutchings, House Chair  
Sen. Lyle W. Hillyard  
Sen. Peter C. Knudson  
Sen. Ross I. Romero  
Rep. Sheryl L. Allen  
Rep. Jim Bird  
Rep. Lorie D. Fowlke  
Rep. Kevin S. Garn  
Rep. Keith Grover  
Rep. Neil A. Hansen  
Rep. Christine A. Johnson  
Rep. Kay L. McIff  
Rep. R. Curt Webb  
Rep. Mark A. Wheatley

**Members Absent:**

Rep. Jackie Biskupski  
Rep. Gregory H. Hughes

**Staff Present:**

Jerry D. Howe, Policy Analyst  
Esther D. Chelsea-McCarty, Associate General Counsel  
Amanda K. Majers, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Hutchings called the meeting to order at 9:36 a.m.

**MOTION:** Rep. Bird moved to approve the minutes of the April 16, 2008 meeting. The motion passed unanimously with Sen. Hillyard, Rep. Garn, and Rep. Wheatley absent for the vote.

**2. Open and Public Meetings Act Training**

Mr. Howe discussed, "Open and Public Meetings Act: Title 52, Chapter 4, Utah Code - 2008 Training - Summary of Key Provisions," which was distributed to the Committee prior to the meeting.

**3. Violation of Protective Order**

Sen. Scott D. McCoy distributed and discussed 2009 General Session draft legislation, "Violation of Protective Order," which gives authority to the courts to dismiss a protective order where there is a repeated attempt to induce breach of that order and where the petitioner's actions demonstrate that the petitioner no longer fears the respondent.

Rep. McIff suggested adding the language "the court may amend or dismiss" to lines 101 and 119 of the draft legislation, and expressed concern with the language outlining the procedure by which the petitioner could make contact with the respondent because he felt the language would be more effective if it were less specific.

Sen. Bell advised that the language "no longer fears the respondent" does not adequately represent the various circumstances in which a protective order can be based, and he wondered if that statement should be changed to "the basis of the protective order no longer exists."

Rep. Fowlke recommended that the language "no longer fears the respondent" be modified to "no longer has a reasonable fear."

Chair Hutchings inquired about what ramifications could result from having a protective order issued against you.

Mr. Stuart Ralphs, Director, Legal Aid Society of Salt Lake, stated that all protective orders are listed on a statewide network; however, the protective orders are civil orders so no criminal history is associated with them, but there are federal ramifications regarding firearms.

Chair Hutchings asked if a protective order can be in place indefinitely.

Mr. Ralphs explained that protective orders are indefinite in length unless modified or dismissed according to Utah statute. The draft legislation being discussed would allow the protective order to be dismissed at anytime, unlike current statute which requires the petitioner to give consent within the first two-year period.

#### **4. Treatment of the Mentally Ill Offender**

Mr. Robert Yeates, Executive Director, Commission on Criminal and Juvenile Justice, gave background information concerning the issue of the mentally ill offender. He stated that across the nation the criminal and juvenile justice systems are overwhelmed by the care of the mentally ill offender causing jails and prisons to become the defacto leading provider of mental health services. Mr. Yeates expounded the many ways the mentally ill offender places a strain on the criminal justice system. He explained that the role of the Mental Health Initiative Group is to review and make recommendations to all branches of government concerning the interaction of the criminal justice system with those people who suffer from mental illness throughout the state in both urban and rural communities.

Mr. Sim Gill, Salt Lake City Prosecutor, spoke about the Salt Lake County Mental Health Court. He stated that the criminal justice system has by default become the top mental health provider and reported that it is among some of the most expensive health care that can be provided. Mr. Gill asserted that the Salt Lake County Mental Health Court is a fiscally responsible option that works to address the challenges, both fiscal and social, created from treating the mentally ill offender. Mr. Gill reported that through the efforts of the Salt Lake County Mental Health Court, mentally ill offenders can be stabilized and released into a community program to have continuity of care through a collaborative approach involving the courts, community healthcare providers, substance abuse and mental health providers, and community housing resources.

Sen. Bell related his experience with the Road Home and how it has dealt with mentally ill offenders and its use of community resources. He stated that this issue is one the Committee should advocate to provide funding for in order to help with the expansion of mental health courts.

Rep. Johnson asked if the Salt Lake County Mental Health Court provides services for veterans dealing with mental illness.

Mr. Gill stated that the Salt Lake County Mental Health Court has consulted with the Veterans Administration and collaborates with its treatment facility, Valor House, which deals with homeless veterans.

Rep. McIlff inquired about the parallel services provided by both the drug courts and mental illness courts and asked if there is any interaction between the two programs.

Mr. Gill explained that a person might start out in drug court and then when the acuteness of that person's mental illness is recognized by one of the administrators that person would then be sent to the mental health court.

Rep. Fowlke asked whether there is anything preventing other counties from implementing their own mental health courts.

Mr. Yeates replied that they are looking at expanding into other districts. He mentioned that they are looking into instituting a hybrid program in Cache County, and indicated that there is some interest in the Second District. He maintained that expanding into other counties will probably be a cumbersome process and will have funding issues.

## **5. Penalty Distribution for Selected Crimes**

Mr. Scott V. Carver, Director, Utah Sentencing Commission, discussed "Utah Sentencing Commission - Penalty Distribution for Selected Crimes 2008," which was distributed to the Committee prior to the meeting. He stated that the manual compares and analyzes criminal penalties to assist the legislators as a reference when creating legislation. Mr. Carver invited legislators to contact the Utah Sentencing Commission to gain feedback and ideas when considering implementing legislation.

Chair Hutchings expressed appreciation to the Utah Sentencing Commission for highlighting penalty distribution, which assists legislators in their awareness of the spectrum of penalties created by the legislation they enact.

Rep. McIff encouraged the Legislature to be slow to enhance penalties on an individual basis as it creates an imbalance causing penalties to become harsher in an effort to equalize penalty distribution.

Mr. Carver also distributed and discussed, "2008 Legislative Session Criminal Penalties Changes."

Mr. Steve Erikson, Citizen's Education Project, informed the Committee that in the 2008 General Session 38 criminal penalty enhancements or new criminal statutes were proposed as legislation, 28 of which were enacted into law with a combined fiscal note of \$2.4 million.

Sen. Bell explained that new legislation often addresses new crimes that are committed due to new technology.

Rep. McIff remarked that in his opinion most enhancements in penalties have been driven by cosmetics rather than by the discovery of new crime.

## **6. Other Items / Adjourn**

**MOTION:** Rep. Johnson moved to adjourn the meeting. The motion passed unanimously.

Chair Hutchings adjourned the meeting at 11:26 a.m.